



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
CHIEF COUNSEL

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The Honorable James M. Inhofe
United States Senate
Washington, D.C. 20510

Dear Senator Inhofe:

I am responding to your letter received by the Legislative Affairs Division of the Internal Revenue Service ("IRS") on March 14, 2000, on behalf of your constituent, [REDACTED]. [REDACTED] asked about the deductibility of costs to remove trees from pasture land on which she grazes cattle. In her letter, [REDACTED] explains that a "red cedar tree infestation" threatens to completely destroy the pasture land and that removal of the trees is necessary in order to recover some of the land. She asked government agencies about her situation, and concluded there does not appear to be a plan in place to share the cost of removing the trees.

On April 12, 2000, Ms. Susie Bird of my office contacted [REDACTED] by telephone in order to gather more facts concerning her inquiry. During that conversation, [REDACTED] explained that red cedar trees on her property are damaging the existing pasture land in two ways. First, the red cedar trees are acidic plants which essentially poison the soil so that existing grass is destroyed. Second, the shade from the trees (which can span 10 feet across the top limbs) prevents grass from growing. [REDACTED] is considering incurring costs to cut down the red cedar trees so that only tree stumps will remain. Eventually, the tree stumps will die, and the pasture land will be restored to its original condition.

[REDACTED] has been advised by her tax return preparer that her proposed tree removal costs are not deductible expenses for tax purposes. She questions why these costs are not deductible when costs related to soil conservation are deductible expenses.

Soil Conservation Costs Under Section 175

The expenses described in [REDACTED] letter do not appear to be within the definition of soil or water conservation costs in § 175, and her letter does not mention a soil conservation plan. Thus, it appears that the election provided in § 175 is not available to her for the proposed tree removal costs.

The rules regarding the tax treatment of soil conservation costs are in § 175 of the Internal Revenue Code. Under that section, a taxpayer in the business of farming can elect to currently deduct certain expenses for “soil or water conservation or for the prevention of erosion of land used in farming.” If the taxpayer does not elect to currently deduct these expenses, they are capital expenses that must be added to the basis of the land.

Expenses for “soil or water conservation or for the prevention of erosion of land used in farming” are defined as “expenditures paid or incurred for the treatment or moving of earth, including (but not limited to) leveling, grading and terracing, contour furrowing, the construction, control, and protection of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks.” The amount deductible under § 175 is limited to 25% of the taxpayer’s gross income derived from farming during the taxable year.

There are several conditions which must be met in order for a taxpayer to make an election under § 175. Most importantly, the election is only available for expenses that are consistent with a soil conservation plan approved by the Soil Conservation Service of the Department of Agriculture for the area in which the land is located, or with a soil conservation plan of a comparable state agency.

Tax Treatment of Tree Removal Costs Under Former Section 182

The election to currently deduct tree removal costs that otherwise would be capital expenditures is no longer available because of the repeal of former § 182.

The proper tax treatment of tree removal costs was addressed by Congress in former § 182. Under former § 182 (which was repealed by Congress in the Tax Reform Act of 1986), the Congress provided an election similar to the § 175 election to taxpayers in the business of farming who incurred costs in the “clearing of land.” If costs were incurred to clear land to make that land “suitable for use in farming,” a taxpayer could elect to currently deduct those costs. The term “clearing of land” included the removal of trees, and “suitable for use in farming” meant land which became suitable for use for the production of agricultural products or for the sustenance of livestock. If a taxpayer did not make the election under § 182, the expenditures were capital expenditures that had to be added to the basis of the land.

The election under former § 182 did not apply to expenditures for “routine brush clearing and other ordinary maintenance activities related to property already used in farming.” When repealing former § 182, Congress explained that expenditures for these activities would “continue to be deductible currently, to the extent they constitute ordinary and necessary business expenses under § 162.” See H.R. Rep. No. 99-426, 99th Cong., 1st Sess., at 650-651 (1985).

I hope this information is helpful to you and your constituent. If I can be of further assistance, please contact me or Susie Bird, of my office, at (202) 622-4950.

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

By _____
Douglas A. Fahey
Acting Chief, Branch 5